

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #2	CCRB Case #: 201809632	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/11/2018 12:30 PM	Location of Incident: 42 George Street	Precinct: 83	18 Mo. SOL 5/11/2020	EO SOL 12/26/2020	
Date/Time CV Reported Fri, 11/16/2018 6:57 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 11/16/2018 6:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Diaz	00246	948884	083 PCT
2. POM Tyler Ryan	13099	961220	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rafed Khan	13930	956796	083 PCT
2. POM Martin Haber	29395	934741	083 PCT
3. POM Carlos Pacheco	11444	956145	083 PCT
4. POM Philip Clottin	15012	954647	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Diaz	Abuse: Sergeant John Diaz threatened § 87(2)(b) with the use of force.	
B.SGT John Diaz	Abuse: Sergeant John Diaz searched § 87(2)(b)	
C.SGT John Diaz	Abuse: Sergeant John Diaz frisked § 87(2)(b)	
D.SGT John Diaz	Abuse: Sergeant John Diaz searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM Tyler Ryan	Discourtesy: Police Officer Tyler Ryan spoke discourteously to § 87(2)(b)	
F.POM Tyler Ryan	Discourtesy: Police Officer Tyler Ryan spoke discourteously to § 87(2)(b)	

## Case Summary

On November 16, 2018, § 87(2)(b) filed this complaint with the CCRB via the website (Board Review #33: Intake).

At approximately 12:30 p.m. on November 11, 2018, § 87(2)(b) and his girlfriend § 87(2)(b) got into a dispute near 42 George Street in Brooklyn. § 87(2)(b) called 911 and reported that § 87(2)(b) struck her with a bottle. Several officers from the 83<sup>rd</sup> Precinct, including Sergeant John Diaz and Police Officer Tyler Ryan, responded to the location. § 87(2)(b) was sitting in the driver's seat of a parked vehicle when they arrived. The officers told § 87(2)(b) to exit the vehicle. When he did not exit, Sergeant Diaz pointed his Taser at § 87(2)(b) (**Allegation A: Abuse of Authority – Threat of Force**, § 87(2)(g)). § 87(2)(b) eventually exited the vehicle. Sergeant Diaz then allegedly searched § 87(2)(b) pants pockets (**Allegation B: Abuse of Authority – Search**, § 87(2)(g)). Sergeant Diaz then frisked § 87(2)(b) (**Allegation C: Abuse of Authority – Frisk**, § 87(2)(g)). Sergeant Diaz then searched the interior of § 87(2)(b) vehicle (**Allegation D: Abuse of Authority – Vehicle Search**, § 87(2)(g)).

The officers took a statement from § 87(2)(b) regarding her dispute with § 87(2)(b). Police Officer Ryan told § 87(2)(b) “She’s saying all you guys got locked up over some shit a year ago.” He later told § 87(2)(b) “He’s talking shit to you” (**Allegations E and F: Discourtesy – Word**, § 87(2)(g)). After Sergeant Diaz spoke to § 87(2)(b) he decided to arrest § 87(2)(b) for menacing (Board Review #01: Arrest Report). He was also informed that § 87(2)(b) had an active bench warrant [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)].

Body-worn camera (BWC) footage was obtained for this incident. It was attached in IAs #32-39 (Board Review #02-09: BWC Footage) and summarized in IA #45 (Board Review #10: BWC Summary). Subclips showing the relevant portions were attached in IAs #108-110 and #115 (Board Review #11-14: BWC Subclips).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant John Diaz threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) provided a telephone statement on November 26, 2018 (Board Review #15: Telephone Statement). He was interviewed at the CCRB on December 10, 2018. § 87(2)(b) provided a telephone statement on January 9, 2019 (Board Review #16: Telephone Statement) but missed two interview appointments and did not provide a sworn statement to the CCRB (Board Review #17: Contact Attempts). Sergeant Diaz was interviewed at the CCRB on February 26, 2019. Police Officer Ryan was interviewed at the CCRB on March 14, 2019.

It is undisputed that Sergeant Diaz responded to a report of an assault in progress at 63 Central Avenue in Brooklyn. The officers located § 87(2)(b) and § 87(2)(b) at 42 George Street, which is located around the corner from 63 Central Avenue. § 87(2)(b) was sitting in the front seat of his car, while § 87(2)(b) was standing across the street from him. Police Officer Martin Haber and Police Officer Carlos Pacheco of the 63<sup>rd</sup> Precinct told § 87(2)(b) to exit his vehicle.

§ 87(2)(b) refused to exit. Sergeant Diaz then pointed his Taser at § 87(2)(b) and told him again to exit the vehicle. Sergeant Diaz did not ultimately discharge the Taser.

§ 87(2)(b) stated that Police Officer Haber and Police Officer Pacheco asked him to exit his vehicle once. He told them that he did not want to exit. Sergeant Diaz then walked up to him and pointed a Taser at his head. § 87(2)(b) then complied and stepped out of the vehicle as directed. Sergeant Diaz then put his Taser away.

§ 87(2)(b) denied calling the police to report the incident or knowing who called the police.

Sergeant Diaz stated that when he approached § 87(2)(b) at his vehicle, Police Officer Pacheco and Police Officer Haber ordered him to step out of the vehicle. § 87(2)(b) started cursing at the two officers. Sergeant Diaz then told § 87(2)(b) to exit the vehicle. § 87(2)(b) then started cursing at Sergeant Diaz. Sergeant Diaz felt that § 87(2)(b) posed a threat to his and his officers' safety due to his irate demeanor. He then drew his Taser and pointed it towards § 87(2)(b). He did so because § 87(2)(b) was uncooperative and he wanted to emphasize his commands. He did not intend to use the Taser. When § 87(2)(b) still did not exit the vehicle, he reached inside and pulled § 87(2)(b) out by his shoulder. Sergeant Diaz made no mention of § 87(2)(b) making any movements inside of the vehicle or hiding his hands.

Police Officer Ryan stated that when the officers approached § 87(2)(b) he was sitting in the front seat of his vehicle with both of his hands under the steering column, out of sight. The gathered officers asked § 87(2)(b) several times to show his hands, but § 87(2)(b) refused to do so. § 87(2)(b) shouted and cursed at the officers. Police Officer Ryan did not recall what § 87(2)(b) was saying. Sergeant Diaz then drew his Taser, pointed it at § 87(2)(b) and ordered § 87(2)(b) to exit his vehicle. § 87(2)(b) again refused to do so. One of the other officers then reached into the vehicle and pulled § 87(2)(b) out.

This incident was documented in ICAD event # § 87(2)(b) (Board Review #18-22: ICAD Event). It shows that § 87(2)(b) called 911 to report that § 87(2)(b) struck her with a bottle. She noted that he had been arrested on prior occasions for violence towards her. When the dispatcher broadcast the event over the radio, she identified § 87(2)(b) by name and reported that he had struck a female with a bottle.

While several officers recorded this incident on their BWCs, Police Officer Ryan was the only officer whose BWC was recording while § 87(2)(b) was still inside of his vehicle. Police Officer Ryan's camera shows the officers standing next to § 87(2)(b) vehicle, but § 87(2)(b) himself is out of frame. The camera does not show § 87(2)(b) actions inside of the car. It also does not show Sergeant Diaz pointing his Taser.

NYPD Patrol Guide procedure 221-08 states that Tasers may be used in order to take a suspect into custody when the suspect is actively resisting, exhibiting active aggression or poses a threat to the physical safety of them or the people around them. Factors to be considered when deploying a Taser include the nature and severity of the crime that the suspect is accused of as well as the actions taken by the suspect during the police encounter. Officers are advised to issue verbal warnings prior to using a Taser. Furthermore, it specifically allows officers the discretion

of pointing the Taser at a subject in order to attempt to achieve voluntary compliance (Board Review #23: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Sergeant John Diaz searched § 87(2)(b)**

§ 87(2)(b) alleged that once he exited his vehicle, Sergeant Diaz searched him by immediately reaching into his front pants pockets. He did so without patting the exterior of the pockets first. § 87(2)(b) told Sergeant Diaz that he did not consent to being searched. Sergeant Diaz told § 87(2)(b) that he was frisking him, not searching him. He then removed his hands from § 87(2)(b) pockets. Sergeant Diaz did not remove any items from § 87(2)(b) pockets, which contained his wallet, his keys and chapstick.

Sergeant Diaz denied that he searched § 87(2)(b). He stated that he frisked § 87(2)(b) once he was handcuffed. He denied that he reached into § 87(2)(b) pockets while doing so. Police Officer Ryan denied seeing any officers reach into § 87(2)(b) pockets or otherwise searching him during the incident.

A video clip from Police Officer Ryan's BWC was attached in IA #110 (Board Review #11: BWC Subclip). It shows Sergeant Diaz reaching towards § 87(2)(b) lower body. § 87(2)(b) accuses Sergeant Diaz of searching him. He states, "You're in my pocket." Sergeant Diaz replies that he was conducting a frisk, not a search. Sergeant Diaz's arms are below the bottom of the frame, so it cannot be seen whether he pats the exterior of § 87(2)(b) clothing or reaches into his pockets.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Sergeant John Diaz frisked § 87(2)(b)**

It is undisputed that Sergeant Diaz frisked § 87(2)(b) after he was removed from his vehicle.

§ 87(2)(b) alleged that after Sergeant Diaz removed his hands from § 87(2)(b) pockets, he patted the exterior of § 87(2)(b) pockets.

Sergeant Diaz stated that he frisked § 87(2)(b) after he pulled § 87(2)(b) from his vehicle and placed him in handcuffs. He did so by patting down § 87(2)(b) waistband, armpits, legs and ankles. He explained that he did this because § 87(2)(b) uncooperative behavior while inside of his vehicle caused him to fear for his safety. Sergeant Diaz did not recall whether he suspected that § 87(2)(b) was carrying a weapon at the time of the frisk.

Police Officer Ryan also stated that § 87(2)(b) was frisked. He did not recall which officer conducted the frisk. Police Officer Ryan noted that he suspected that § 87(2)(b) was carrying a weapon at the time because he had refused to show his hands while inside of his vehicle, and because he had been accused of assaulting § 87(2)(b).

As discussed above, the ICAD event shows that the initial radio report received by Sergeant Diaz and the other officers stated that § 87(2)(b) had assaulted § 87(2)(b) by striking her with a bottle.

When an officer reasonably suspects that an individual has committed a “serious and violent” crime, the officer may frisk that individual even if they do not have an independent suspicion that the individual is armed. People v. Figueroa, 233 A.D. 2d 461 (App. Term, 2<sup>nd</sup> Dept, 1996), citing to People v. Mack, 26 N.Y.2d 311 (1970) (Board Review #24, 30: Legal Reference).

§ 87(2)(g)  
[REDACTED]

**Allegation (D) Abuse of Authority: Sergeant John Diaz searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that after § 87(2)(b) was removed from his vehicle and placed in handcuffs, Sergeant Diaz searched the vehicle. He entered the front seat and examined the interior passenger areas of the vehicle. He did not remove anything from § 87(2)(b) vehicle. § 87(2)(b) was told that he was being detained but was not under arrest at the time of the search. He was only told that he was arrested after the search concluded.

§ 87(2)(b) stated that after he was handcuffed, Sergeant Diaz entered his vehicle and searched it. Sergeant Diaz first reached into the glove compartment before reaching into a backpack that § 87(2)(b) kept in his vehicle’s back seat. Sergeant § 87(2)(b) did not remove anything from the vehicle. After the search was conducted, § 87(2)(b) was told that he had an active warrant. He was then taken into custody.

§ 87(2)(b) made no mention of the vehicle search. At some point during the incident, § 87(2)(b) spoke to Sergeant Diaz and provided an account of her fight with § 87(2)(b). She was later told that § 87(2)(b) had an active warrant.

Sergeant Diaz stated that he searched § 87(2)(b) vehicle because he was concerned for his safety due to § 87(2)(b) angry and uncooperative behavior during their encounter. He searched underneath the driver's seat, inside of the driver's door panel, the center console and on top of the back seat. He denied seeing any bags in the vehicle. Sergeant Diaz limited the scope of his search to areas that § 87(2)(b) could have reached while seated in the driver's seat. Sergeant Diaz also noted that § 87(2)(b) was not yet considered to be under arrest at the time of the vehicle search. He decided to arrest § 87(2)(b) later, after he obtained a statement from § 87(2)(b) regarding her fight with § 87(2)(b) and after a warrant check for § 87(2)(b) found that he had an open warrant [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] Board Review #32: Warrant Audit).

Police Officer Ryan stated that one of the officers searched § 87(2)(b) vehicle. He did not recall who conducted the vehicle search, nor did he recall the scope of the vehicle search. He also stated that Sergeant Diaz decided to arrest § 87(2)(b) after the vehicle search, after he spoke to § 87(2)(b) and after § 87(2)(b) open warrant was discovered.

As discussed above, the ICAD event shows that the initial radio report received by Sergeant Diaz and the other officers stated that § 87(2)(b) had assaulted § 87(2)(b) by striking her with a bottle.

A video clip from Police Officer Pacheco's BWC (Board Review #12: BWC Subclip) shows Sergeant Diaz entering § 87(2)(b) vehicle through the driver's door. He initially leans towards the front seat. § 87(2)(b) tells Sergeant Diaz not to search his vehicle. Sergeant Diaz replies that he is searching the vehicle's "lungeable, grabbable area." He later leans into the vehicle's back seat. § 87(2)(b) tells him to stop searching his bag. Due to the position of the camera, Sergeant Diaz's actions inside of the vehicle are not clearly visible.

Absent probable cause, it is generally unlawful for a police officer to search the interior of a stopped vehicle once the suspects have been removed and patted down, but before officers have probable cause to arrest them. An exception to this rule exists in circumstances where the officers possess information indicating that a weapon located within the vehicle presents an "actual and specific" danger to the officers' safety. Factors that might indicate that a suspect has a weapon in their vehicle that may present a danger to officers include the vehicle's occupants failing to follow officers' directions after being stopped, an obvious lack of concern for the safety of others, and the vehicle's occupants matching a description of an individual suspected of participating in a violent crime involving a weapon. Under such circumstances, officers may conduct a limited search of the vehicle to search for the weapon, notwithstanding the occupants' inability to gain immediate access to the weapon. People v. Mundo, 99 N.Y.2d55 (2002). People v. Cameron, 6 A.D. 3d 546 (App. Term, 2<sup>nd</sup> Dept, 2004). (Board Review #25, #31: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

**Allegation (E) Discourtesy: Police Officer Tyler Ryan spoke discourteously to § 87(2)(b)**

**Allegation (F) Discourtesy: Police Officer Tyler Ryan spoke discourteously to § 87(2)(b)**

Neither § 87(2)(b) nor § 87(2)(b) alleged that any of the officers used profanity while speaking to them. Police Officer Ryan denied that he used any profanity during the incident. Sergeant Diaz denied hearing any officers use profanity towards a civilian.

The first video clips taken from Police Officer Ryan’s BWC footage (Board Review #13: BWC Subclip) show Police Officer Ryan asking § 87(2)(b) “What happened with her family? Because she’s saying all you guys got locked up over some shit a year ago.” The second video clip (Board Review #14: BWC Subclip) shows him telling § 87(2)(b) “[§ 87(2)(b) is] talking shit to you.” When Police Officer Ryan was shown these recordings, he stated that he used profanity because he was “just making conversation” with § 87(2)(b) and § 87(2)(b).

Officers may use limited profanity while attempting to gain control of a dynamic situation. Officers may not use profanity when it does not serve a legitimate purpose or is intended solely to demean an individual. PD v. Pichardo, DAO-DCT Case #2015-15012 (Board Review #26: Legal Reference).

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two previous CCRB complaints and has been named as a victim in six allegations (Board Review #27: § 87(2)(b) CCRB History):
  - § 87(2)(b)
- § 87(2)(b) has been party to two previous CCRB complaints. This is the first complaint in which she has been named a victim (Board Review #28: § 87(2)(b) s CCRB History).
- Sergeant Diaz has been a member of the service for eight years and has been a subject in five previous CCRB complaints and eight allegations, none of which were substantiated.  
§ 87(2)(g)
- Police Officer Ryan has been a member of the service for three years and has been a subject in two previous CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 5, 2019, neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim with the NYC Office of the Comptroller (Board Review #34: NOC Results).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]



Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date